

Appl. No. 10/071,702  
Amdt. & Resp. Dated April 5, 2004  
Reply to Office Action of January 29, 2004

### REMARKS

Claims 1 – 12 are pending in this application. Claims 1 and 2 are withdrawn from consideration as being directed to a nonelected invention. Minor changes are made to the specification. Reexamination and reconsideration of the application, as amended, are respectfully requested.

The Examiner requested the first paragraph of the specification be updated to include the status of all related applications. Applicants have accordingly amended the first paragraph of the specification to indicate the current patented status and patent number of the parent application.

Claims 3 – 12 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,602,467 to Divino, Jr. et al. (the '467 patent). This rejection is respectfully traversed.

Applicants respectfully submit that the '467 patent is not a proper basis for rejection of this application under 35 U.S.C. § 102(e). The present application is a divisional of U.S. patent application serial number 09/409,952, filed September 30, 1999. The effective filing date of this application is therefore September 30, 1999. The filing date of the '467 patent is also September 30, 1999. A basis for application of a patent reference as an invalidating prior art reference under 35 U.S.C. § 102(e) is: "a patent granted on an application filed in the United States before the invention by the applicant for patent" (emphasis added). As the '467 patent was filed the same day as, not before, the effective filing date of the present application, the '467 patent should not be cited as a prior art reference against this application. Accordingly, the '467 patent should be withdrawn as a prior art reference. For this reason, Applicants request withdrawal of the rejection under 35 U.S.C. § 102(e) based thereupon.

Claims 3 – 12 are provisionally rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 3 – 12 of copending U.S. patent application serial number 10/384,301, published as Publication Number 2003/0215356 A1 (the '301 application). Applicants respectfully traverse this rejection.

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The '301 application was originally filed with claims 1 - 38, including claims 3 - 12 which were identical to claims 3 - 12 of the present application. However, by preliminary amendment dated the same day as the filing of the '301 application, the provisionally conflicting claims 3 - 12, among others, were canceled. The claims presently pending in the '301 application are drawn to methods of blood oxygenation, and not the apparatus of blood oxygenation claimed in the present application. Accordingly, Applicants respectfully request withdrawal of the provisional double patenting rejection under 35 U.S.C. § 101.

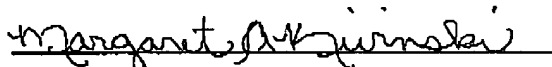
In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. Reexamination and reconsideration of the application, as amended, are requested.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is invited to call the undersigned attorney at the Irvine, California telephone number (949) 757-1999 to discuss the steps necessary for placing the application in condition for allowance.

If there are any fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-1769.

Respectfully submitted,

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